

**OPINION  
66-153**

October 17, 1966 (OPINION)

Mr. Jacque Stockman

Clerk

Park District

Fargo, ND

RE: The Park District of the City of Fargo

This is in reference to your letter of October 12, 1966, relative to section 40-49-15 of the North Dakota Century Code. You state the following facts and questions:

"The question to which we request your formal opinion is, to what formal conveyancing transactions is the Park District limited in the use of this statute? Must the purchase be only by contract for deed transaction, which is the usual interpretation of this law, or may the Park District receive a deed and execute a purchase money note and mortgage and still be within the limits of this statute.

"A note on the particular fact situation may be helpful. The Fargo Park District has concluded that an emergency exists and that it is desirable and necessary to purchase from the federal government, 8.4 acres of an old radio tower site on North Broadway in Fargo, North Dakota, at a favorable price equal to about one-third of the true value, payable in several annual installments.

"The General Services Administration acting for the United States of America in order to consummate the transaction offers the Fargo Park District a deed and asks the appropriate offices to execute a purchase money note and mortgage. The problem then arises, are said officers acting outside the authority of the statute and guilty of misfeasance or malfeasance."

Section 40-49-15 of the North Dakota Century Code provides:

"PURCHASE OF LAND BY CITY PARK DISTRICT ON INSTALLMENT CONTRACT - CONDITIONS AND LIMITATIONS. After declaring by resolution duly passed that an emergency exists in that it is desirable and necessary that additional lands, as described in the resolution, be acquired for park purposes, the board of park commissioners of any city may enter into a contract or contracts for the purchase of such additional land for park purposes and for the payment of the purchase price therefor in annual installments. The power to enter into such contracts shall be subject to the following limitations and conditions:

1. All moneys to be paid annually under any such contract shall be available and paid only from revenues to be derived from the authorized tax levy of the park district;

2. Contracts which at any time shall create aggregate future obligations of the park district in an amount in excess of one-fifth of one percent of the value of all taxable property within the park district may not be entered into under the provisions of this section; and
3. The total amount contracted to become payable within any year by any park board shall not exceed twenty percent of the authorized tax revenue of the park district for the year in which any such contract is made."

As you have noted in your letter, the ordinary interpretation of this provision would be that it authorizes the park district to enter into a contract for deed for the purchase of certain property. However the language is not, in effect, that specific. It authorizes the Park Board to "enter into a contract or contracts for the purchase of such additional land for park purposes and for the payment of the purchase price therefore in annual installments." The deed and the purchase money note and mortgage would appear to constitute "contracts" within the meaning of this provision. The note and mortgage would require the payment of the "purchase price therefore in annual installments."

The primary objective of this legislation would appear to be to permit the park board to purchase property on an installment basis. This method of financing is not permitted by political subdivisions except where specifically authorized by law. Whether such purchase is accomplished by a contract for deed or by a purchase money note and mortgage would appear to be of little consequence, since in North Dakota, if there is a default on a mortgage, the vendor of the property can acquire a deficiency judgment only in accordance with statute and the statute (section 32-19-06) permits a deficiency judgment which "shall not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises." If the park district is offered the property at a reasonable price, it would not appear a deficiency could be secured against the park district should they default in payments. Therefore we see no difference, in legal effect, between the contract for deed and the purchase money note and mortgage.

It is our opinion that the park district may purchase the property in question by means of a purchase money note and mortgage under the provisions of section 40-49-15.

HELGI JOHANNESON

Attorney General